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ADIDAS AMERICA, INC.

11
12 **UNITED STATES DISTRICT COURT**
13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

14 ABRAHAM BERTI LEVY,

15 Plaintiff,

16 v.

17 ADIDAS AG; ADIDAS
18 AMERICA, INC.,

19 Defendants.

Case No. 2:18-CV-06542
PSG(MAAX)

**STIPULATED PROTECTIVE
ORDER**

Hon. Maria A. Audero

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22 1. A. PURPOSES AND LIMITATIONS

23 Discovery in this action is likely to involve production of confidential,
24 proprietary, or private information for which special protection from public
25 disclosure and from use for any purpose other than prosecuting this litigation may
26 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
27 enter the following Stipulated Protective Order. The parties acknowledge that this
28 Order does not confer blanket protections on all disclosures or responses to

1 discovery and that the protection it affords from public disclosure and use extends
2 only to the limited information or items that are entitled to confidential treatment
3 under the applicable legal principles. The parties further acknowledge, as set forth in
4 Section 12.3, below, that this Stipulated Protective Order does not entitle them to
5 file confidential information under seal; Civil Local Rule 79-5 sets forth the
6 procedures that must be followed and the standards that will be applied when a party
7 seeks permission from the court to file material under seal.

8 B. GOOD CAUSE STATEMENT

9 This action is likely to involve trade secrets, intellectual property, business
10 strategy, and customer and pricing lists and other valuable research, development,
11 commercial, financial, technical and/or proprietary information for which special
12 protection from public disclosure and from use for any purpose other than
13 prosecution of this action is warranted. Such confidential and proprietary materials
14 and information consist of, among other things, confidential business or financial
15 information, information regarding confidential business practices, or other
16 confidential research, development, or commercial information (including
17 information implicating privacy rights of third parties), information otherwise
18 generally unavailable to the public, or which may be privileged or otherwise
19 protected from disclosure under state or federal statutes, court rules, case decisions,
20 or common law. Accordingly, to expedite the flow of information, to facilitate the
21 prompt resolution of disputes over confidentiality of discovery materials, to
22 adequately protect information the parties are entitled to keep confidential, to ensure
23 that the parties are permitted reasonable necessary uses of such material in
24 preparation for and in the conduct of trial, to address their handling at the end of the
25 litigation, and serve the ends of justice, a protective order for such information is
26 justified in this matter. It is the intent of the parties that information will not be
27 designated as confidential for tactical reasons and that nothing be so designated
28 without a good faith belief that it has been maintained in a confidential, non-public

1 manner, and there is good cause why it should not be part of the public record of this
2 case.

3 **2. DEFINITIONS**

4 2.1 Action: *Abraham Berti Levy v. adidas America, Inc.*, 2:18-CV-06542-
5 PSG(MAAx).

6 2.2 Challenging Party: a Party or Non-Party that challenges the designation
7 of information or items under this Order.

8 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
9 how it is generated, stored or maintained) or tangible things that qualify for
10 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
11 the Good Cause Statement.

12 2.4 “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY”
13 Information or Items: information that meets the standards for “CONFIDENTIAL
14 Information set forth in section 2.3 and is confidential and competitively sensitive to
15 the producing party that the producing party believes in good faith would be
16 detrimental to the producing party if disclosed to other parties, including but not
17 limited to trade secrets as that term is defined in Cal Civ. Code §3426.1, proprietary
18 pricing information, proprietary marketing information, proprietary customer lists
19 (including past, current and prospective customers), proprietary financial and
20 accounting information, proprietary licensing or contractual information, and
21 sensitive personal information. The term HIGHLY CONFIDENTIAL –
22 ATTORNEY’S EYES ONLY does not include public records and other information
23 or materials that are publically available.

24 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as
25 their support staff).

26 2.6 Designating Party: a Party or Non-Party that designates information or
27 items that it produces in disclosures or in responses to discovery as
28 “CONFIDENTIAL.”

1 2.7 Disclosure or Discovery Material: all items or information, regardless
2 of the medium or manner in which it is generated, stored, or maintained (including,
3 among other things, testimony, transcripts, and tangible things), that are produced or
4 generated in disclosures or responses to discovery in this matter.

5 2.8 Expert: a person with specialized knowledge or experience in a matter
6 pertinent to the litigation who has been retained by a Party or its counsel to serve as
7 an expert witness or as a consultant in this Action.

8 2.9 House Counsel: attorneys who are employees of a party to this Action.
9 House Counsel does not include Outside Counsel of Record or any other outside
10 counsel.

11 2.10 Non-Party: any natural person, partnership, corporation, association, or
12 other legal entity not named as a Party to this action.

13 2.11 Outside Counsel of Record: attorneys who are not employees of a party
14 to this Action but are retained to represent or advise a party to this Action and have
15 appeared in this Action on behalf of that party or are affiliated with a law firm which
16 has appeared on behalf of that party, and includes support staff.

17 2.12 Party: any party to this Action, including all of its officers, directors,
18 employees, consultants, retained experts, and Outside Counsel of Record (and their
19 support staffs).

20 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
21 Discovery Material in this Action.

22 2.14 Professional Vendors: persons or entities that provide litigation support
23 services (e.g., photocopying, videotaping, translating, preparing exhibits or
24 demonstrations, and organizing, storing, or retrieving data in any form or medium)
25 and their employees and subcontractors.

26 2.15 Protected Material: any Disclosure or Discovery Material that is
27 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—
28 ATTORNEYS’ EYES ONLY.”

1 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material
2 from a Producing Party.

3 3. SCOPE

4 The protections conferred by this Stipulation and Order cover not only
5 Protected Material (as defined above), but also (1) any information copied or
6 extracted from Protected Material; (2) all copies, excerpts, summaries, or
7 compilations of Protected Material; and (3) any testimony, conversations, or
8 presentations by Parties or their Counsel that might reveal Protected Material.

9 Any use of Protected Material at trial shall be governed by the orders of the
10 trial judge. This Order does not govern the use of Protected Material at trial.

11 4. DURATION

12 Even after final disposition of this litigation, the confidentiality obligations
13 imposed by this Order shall remain in effect until a Designating Party agrees
14 otherwise in writing or a court order otherwise directs. Final disposition shall be
15 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
16 or without prejudice; and (2) final judgment herein after the completion and
17 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
18 including the time limits for filing any motions or applications for extension of time
19 pursuant to applicable law.

20 5. DESIGNATING PROTECTED MATERIAL

21 5.1 Exercise of Restraint and Care in Designating Material for Protection.
22 Each Party or Non-Party that designates information or items for protection under
23 this Order must take care to limit any such designation to specific material that
24 qualifies under the appropriate standards. The Designating Party must designate for
25 protection only those parts of material, documents, items, or oral or written
26 communications that qualify so that other portions of the material, documents,
27 items, or communications for which protection is not warranted are not swept
28 unjustifiably within the ambit of this Order.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations
2 that are shown to be clearly unjustified or that have been made for an improper
3 purpose (e.g., to unnecessarily encumber the case development process or to impose
4 unnecessary expenses and burdens on other parties) may expose the Designating
5 Party to sanctions.

6 If it comes to a Designating Party's attention that information or items that it
7 designated for protection do not qualify for protection, that Designating Party must
8 promptly notify all other Parties that it is withdrawing the inapplicable designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in
10 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
11 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
12 under this Order must be clearly so designated before the material is disclosed or
13 produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic
16 documents, but excluding transcripts of depositions or other pretrial or trial
17 proceedings), that the Producing Party affix at a minimum, the legend
18 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES
19 ONLY" (hereinafter "Confidentiality legend"), to each page that contains protected
20 material. If only a portion or portions of the material on a page qualifies for
21 protection, the Producing Party also must clearly identify the protected portion(s)
22 (e.g., by making appropriate markings in the margins).

23 A Party or Non-Party that makes original documents available for inspection
24 need not designate them for protection until after the inspecting Party has indicated
25 which documents it would like copied and produced. During the inspection and
26 before the designation, all of the material made available for inspection shall be
27 deemed "CONFIDENTIAL." After the inspecting Party has identified the
28 documents it wants copied and produced, the Producing Party must determine which

documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the “Confidentiality legend” to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in depositions that the Designating Party identify the Disclosure or Discovery Material on the record, before the close of the deposition all protected testimony, or within 30 days of receipt of the transcript.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend Confidentiality Legend. If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court’s Scheduling Order.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37.1 et seq.

6.3 The burden of persuasion in any such challenge proceeding shall be on

1 the Designating Party. Frivolous challenges, and those made for an improper
2 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
3 parties) may expose the Challenging Party to sanctions. Unless the Designating
4 Party has waived or withdrawn the confidentiality designation, all parties shall
5 continue to afford the material in question the level of protection to which it is
6 entitled under the Producing Party's designation until the Court rules on the
7 challenge.

8 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is
10 disclosed or produced by another Party or by a Non-Party in connection with this
11 Action only for prosecuting, defending, or attempting to settle this Action. Such
12 Protected Material may be disclosed only to the categories of persons and under the
13 conditions described in this Order. When the Action has been terminated, a
14 Receiving Party must comply with the provisions of section 13 below (FINAL
15 DISPOSITION).

16 Protected Material must be stored and maintained by a Receiving Party at a
17 location and in a secure manner that ensures that access is limited to the persons
18 authorized under this Order.

19 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
20 otherwise ordered by the court or permitted in writing by the Designating Party, a
21 Receiving Party may disclose any information or item designated
22 "CONFIDENTIAL" only to:

23 (a) the Receiving Party's Outside Counsel of Record in this Action,
24 as well as employees of said Outside Counsel of Record to whom it is reasonably
25 necessary to disclose the information for this Action;

26 (b) the officers, directors, and employees (including House Counsel)
27 of the Receiving Party to whom disclosure is reasonably necessary for this Action;

28 (c) Experts (as defined in this Order) of the Receiving Party to

1 whom disclosure is reasonably necessary for this Action and who have signed the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (d) the court and its personnel;

4 (e) court reporters and their staff;

5 (f) professional jury or trial consultants, mock jurors, and
6 Professional Vendors to whom disclosure is reasonably necessary for this Action
7 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
8 A);

9 (g) the author or recipient of a document containing the information
10 or a custodian or other person who otherwise possessed or knew the information;

11 (h) during their depositions, witnesses, and attorneys for witnesses,
12 in the Action to whom disclosure is reasonably necessary provided: (1) the deposing
13 party requests that the witness sign the form attached as Exhibit A hereto; and (2)
14 they will not be permitted to keep any confidential information unless they sign the
15 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
16 agreed by the Designating Party or ordered by the court. Pages of transcribed
17 deposition testimony or exhibits to depositions that reveal Protected Material may
18 be separately bound by the court reporter and may not be disclosed to anyone except
19 as permitted under this Stipulated Protective Order; and

20 (i) any mediator or settlement officer, and their supporting
21 personnel, mutually agreed upon by any of the parties engaged in settlement
22 discussions.

23 7.3 Disclosure of “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES
24 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
25 writing by the Designating Party, a Receiving Party may disclose any information or
26 item designated “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY” only
27 to: (a) All of the people listed in subsections (a) through (i) in paragraph 7.2 above,
28 except that subsection (b) shall be limited to only House Counsel of the Receiving

1 Party to whom disclosure is reasonably necessary for this Action.

2 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
3 IN OTHER LITIGATION

4 If a Party is served with a subpoena or a court order issued in other litigation that
5 compels disclosure of any information or items designated in this Action as
6 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES
7 ONLY”, that Party must:

8 (a) promptly notify in writing the Designating Party. Such
9 notification shall include a copy of the subpoena or court order;

10 (b) promptly notify in writing the party who caused the subpoena or
11 order to issue in the other litigation that some or all of the material covered by the
12 subpoena or order is subject to this Protective Order. Such notification shall include
13 a copy of this Stipulated Protective Order; and

14 (c) cooperate with respect to all reasonable procedures sought to be
15 pursued by the Designating Party whose Protected Material may be affected.

16 If the Designating Party timely seeks a protective order, the Party served with
17 the subpoena or court order shall not produce any information designated in this
18 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’
19 EYES ONLY” before a determination by the court from which the subpoena or
20 order issued, unless the Party has obtained the Designating Party’s permission. The
21 Designating Party shall bear the burden and expense of seeking protection in that
22 court of its confidential material and nothing in these provisions should be construed
23 as authorizing or encouraging a Receiving Party in this Action to disobey a lawful
24 directive from another court.

25 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
26 PRODUCED IN THIS LITIGATION

27 (a) The terms of this Order are applicable to information produced
28 by a Non-Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY

1 CONFIDENTIAL—ATTORNEYS’ EYES ONLY”. Such information produced by
2 Non-Parties in connection with this litigation is protected by the remedies and relief
3 provided by this Order. Nothing in these provisions should be construed as
4 prohibiting a Non-Party from seeking additional protections.

5 (b) In the event that a Party is required, by a valid discovery request,
6 to produce a Non-Party’s confidential information in its possession, and the Party is
7 subject to an agreement with the Non-Party not to produce the Non-Party’s
8 confidential information, then the Party shall:

9 (1) promptly notify in writing the Requesting Party and the
10 Non-Party that some or all of the information requested is subject to a
11 confidentiality agreement with a Non-Party;

12 (2) promptly provide the Non-Party with a copy of the
13 Stipulated Protective Order in this Action, the relevant discovery request(s), and a
14 reasonably specific description of the information requested; and

15 (3) make the information requested available for inspection by
16 the Non-Party, if requested.

17 (c) If the Non-Party fails to seek a protective order from this court
18 within 14 days of receiving the notice and accompanying information, the Receiving
19 Party may produce the Non-Party’s confidential information responsive to the
20 discovery request. If the Non-Party timely seeks a protective order, the Receiving
21 Party shall not produce any information in its possession or control that is subject to
22 the confidentiality agreement with the Non-Party before a determination by the
23 court. Absent a court order to the contrary, the Non-Party shall bear the burden and
24 expense of seeking protection in this court of its Protected Material.

25 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

26 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
27 Protected Material to any person or in any circumstance not authorized under this
28 Stipulated Protective Order, the Receiving Party must immediately (a) notify in

1 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
2 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
3 persons to whom unauthorized disclosures were made of all the terms of this Order,
4 and (d) request such person or persons to execute the “Acknowledgment and
5 Agreement to Be Bound” that is attached hereto as Exhibit A.

6 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
7 PROTECTED MATERIAL

8 When a Producing Party gives notice to Receiving Parties that certain
9 inadvertently produced material is subject to a claim of privilege or other protection,
10 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
11 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
12 may be established in an e-discovery order that provides for production without
13 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar
14 as the parties reach an agreement on the effect of disclosure of a communication or
15 information covered by the attorney-client privilege or work product protection, the
16 parties may incorporate their agreement in the stipulated protective order submitted
17 to the court.

18 12. MISCELLANEOUS

19 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
20 person to seek its modification by the Court in the future.

21 12.2 Right to Assert Other Objections. By stipulating to the entry of this
22 Protective Order no Party waives any right it otherwise would have to object to
23 disclosing or producing any information or item on any ground not addressed in this
24 Stipulated Protective Order. Similarly, no Party waives any right to object on any
25 ground to use in evidence of any of the material covered by this Protective Order.

26 12.3 Filing Protected Material. A Party that seeks to file under seal any
27 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
28 only be filed under seal pursuant to a court order authorizing the sealing of the

specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

13. FINAL DISPOSITION

After the final disposition of this Action, as defined in paragraph 4, within 60 days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

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1 14. Any violation of this Order may be punished by any and all appropriate
2 measures including, without limitation, contempt proceedings and/or monetary
3 sanctions.

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6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

7
8 DATED: January 6, 2020

KILPATRICK TOWNSEND & STOCKTON
LLP

9
10 By: /s/Kollin J. Zimmermann
11 R. CHARLES HENN JR.
12 KOLLIN J. ZIMMERMANN
13 KENESIA L. COOK
Attorneys for Defendant
ADIDAS AMERICA, INC.

14 DATED: January 6, 2020

PRICE, POSTEL & PARMA LLP

15
16 By: /s/ Melissa J. Fassett
17 MELISSA J. FASSETT
18 TIMOTHY E. METZINGER
19 SUSAN M. BASHAM,
Attorneys for Plaintiff
ABRAHAM BERTI LEVY

20
21 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

22
23 
24 _____
25 Honorable Maria A. Audero
United States Magistrate Judge

26
27 _____
28 January 9, 2020
Date

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury
5 that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Central District of California
7 on [date] in the case of *Abraham Berti Levy v. adidas America, Inc.*, 2:18-CV-
8 06542-PSG(MAAX). I agree to comply with and to be bound by all the terms of this
9 Stipulated Protective Order and I understand and acknowledge that failure to so
10 comply could expose me to sanctions and punishment in the nature of contempt. I
11 solemnly promise that I will not disclose in any manner any information or item that
12 is subject to this Stipulated Protective Order to any person or entity except in strict
13 compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the
15 Central District of California for the purpose of enforcing the terms of this
16 Stipulated Protective Order, even if such enforcement proceedings occur after
17 termination of this action. I hereby appoint _____ [print or type
18 full name] of _____ [print or type full
19 address and telephone number] as my California agent for service of process in
20 connection with this action or any proceedings related to enforcement of this
21 Stipulated Protective Order.

22 Date: _____

23 City and State where sworn and signed: _____

24
25 Printed name: _____

26
27 Signature: _____